

Message Text

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ACTION STR-07

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 STRE-00 AGRE-00
CEA-01 CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01
INR-10 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01
CTME-00 AID-05 SS-15 ITC-01 TRSE-00 USIA-06 SP-02
SOE-02 OMB-01 DOE-11 AF-10 ARA-10 NEA-10 OIC-02
/159 W

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P 151600Z MAR 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 7227
INFO AMEMBASSY BRUSSELS
AMEMBASSY LONDON
AMEMBASSY SEOUL
AMEMBASSY TOKYO

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USEEC

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E.O. 11652: N/A
TAGS: ETRD, GATT, KS
SUBJECT: GATT COUNCIL - UK/EC ACTION ON IMPORTS OF
KOREAN TELEVISIONS

REF: STATE 64495

1. SUMMARY: KOREA, SUPPORTED BY LARGE NUMBER OF OTHER
DELEGATES, ATTACKED UK/EC DISCRIMINATORY SAFEGUARD ACTION
AS ILLEGAL UNDER THE GATT. NORDICS WERE ONLY DELS SUP-
PORTING EC ACTION AS CONSISTENT WITH GENERAL AGREEMENT.
END SUMMARY.

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2. KOREAN DEL, IN BLUNT INTERVENTION, RAISED ISSUE OF
UK/EC RESTRAINTS ON IMPORTS OF KOREAN TV SETS UNDER
GATT ITEM "OTHER BUSINESS." KOREAN DEL OUTLINED FACTS
OF CASE WHICH INCLUDED CONSULTATIONS WITH UK IN EARLY
1977, SURPRISE UNILATERAL IMPORT RESTRICTIONS INSTITUTED
BY UK IN JULY 1977, SUBSEQUENT NOTIFICATION BY EC 4-1/2
MONTHS LATER UNDER ARTICLE XIX, AND RECENT CONSULTATIONS

WITH UK. KOREAN DEL ATTACKED UK/EC NOTIFICATION ON GROUNDS THAT IMPORT RESTRAINTS WERE INSTITUTED ON BASIS OF PLANNED KOREAN EXPORTS OF 300,000 SETS WHICH KOREA DENIED WAS THE INTENDED LEVEL OF EXPORTS. KOREAN DEL QUESTIONED RIGHT OF COMMUNITY TO ASSUME THAT MARKET DISRUPTION WOULD TAKE PLACE ON BASIS OF PLANNED EXPORTS AND WHETHER DISCRIMINATORY IMPORT RESTRICTIONS ON THIS BASIS WERE JUSTIFIABLE UNDER ARTICLE XIX. KOREAN DEL CALLED COMMUNITY'S UNILATERAL AND DISCRIMINATORY RESTRICTIONS "IN CLEAR VIOLATION AND IN CONTRADICTION TO THE RELEVANT PROVISIONS OF THE GATT." DEL FURTHER SAID THAT THERE SEEMS TO EXIST "CERTAIN INCLINATIONS ON THE PART OF A DEVELOPED CONTRACTING PARTY TO LEGITIMIZE SELECTIVE IMPORT RESTRICTION UNDER THE PRESENT GATT MECHANISM AND FURTHER UTILIZE IT AS A PRECEDENT IN ITS CONDUCT OF INTERNATIONAL TRADE IN COMING YEARS." KOREAN DEL CONCLUDED BY URGING THE EC TO IMMEDIATELY REPEAL THIS ACTION AND TO SEEK A MUTUALLY AGREEABLE SOLUTION THROUGH BILATERAL CONSULTATIONS. KOREAN DEL SAID IT WAS GOK'S INTENTION TO AGAIN REFER THE MATTER TO THE COUNCIL DEPENDING ON FUTURE DEVELOPMENTS.

3. HONG KONG'S REPRESENTATIVE OUTLINED LENGTHY HISTORY OF ARTICLE XIX DATING FROM HAVANA CHARTER IN ORDER TO POINT OUT THAT THERE COULD BE NO QUESTION THAT ARTICLE XIX CAN ONLY BE APPLIED ON A MFN BASIS EXCEPT WHERE THERE IS LIMITED OFFICIAL USE

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SPECIFIC DEROGATION SUCH AS IN THE RETALIATION CLAUSE (ARTICLE XIX:3(A)). HE POINTED OUT THAT THE QUESTION HAD BEEN CONSIDERED IN THE 1953 ACCESSION OF JAPAN WHEN AN ADDITION TO PARAGRAPH ONE OF ARTICLE XIX FOR SELECTIVE APPLICATION WAS RULED OUT. HE SIMILARLY ALLUDED TO THE 1960 DISCUSSION IN THE GATT ON MARKET DISRUPTION AND SAID THAT THE DEROGATION FOR DISCRIMINATORY RESTRAINTS IN THE MFA WOULD NOT HAVE BEEN NECESSARY IF SUCH DISCRIMINATORY RESTRAINTS HAD ALREADY BEEN ACCEPTABLE UNDER ARTICLE XIX.

4. JAPAN (SAWAKI) SAID THAT EC NOTIFICATION CANNOT BE CONSIDERED AS A MEASURE UNDER ARTICLE XIX, WHICH REQUIRES RESTRAINTS ON A NON-DISCRIMINATORY BASIS. SAWAKI SAID THAT, ACCORDING TO ACCEPTED INTERNATIONAL RULES, NATIONS MUST BE IN COMPLIANCE WITH EXISTING RULES ALTHOUGH THEY CAN MAKE PROPOSALS TO AMEND SUCH RULES. HE HOPED THAT SITUATION COULD BE RECTIFIED IMMEDIATELY IN ACCORDANCE WITH ESTABLISHED PROCEDURES.

5. PAKISTAN (HAMID) CHIDED UK FOR NOT NOTIFYING MEASURE PROMPTLY, CALLED MEASURE CLEARLY ILLEGAL AND A MATTER

FUNDAMENTAL TO THE STRUCTURE OF THE GENERAL AGREEMENT.
HAMID BELIEVED THERE WAS NO NEED TO CALL THE ATTENTION
OF THE EC AND THE UK TO THE ILLEGALITY OF THE ACTION
AND SAID THAT THE MATTER SHOULD BE KEPT BEFORE THE
COUNCIL.

6. MALAYSIAN DEL (FONG), IN LONG, RAMBLING DISSERTATION,
SAID THAT MATTER IS RELATED TO BALANCE OF PAYMENTS
PROBLEMS SUCH AS HAD BEEN TAKEN UP UNDER THE BOP CONSULTA-
TIONS WITH PAKISTAN. HE NOTED THAT KOREA ALSO HAS
BALANCE OF PAYMENTS PROBLEMS WHICH ARE WORSENERED BY RES-
TRAINTS IN DEVELOPED COUNTRY'S MARKETS ON KOREAN EXPORTS.
HE CALLED MEASURES CLEARLY ILLEGAL, CRITICIZED UK DIS-
CRIMINATION IN ITS LICENSING FEES ON COLOR AND BLACK/
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P 151600Z MAR 78
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WHITE TELEVISIONS (LICENSE FEES FOR BLACK/WHITE TVS ARE 8 POUNDS AND THOSE FOR COLOR 18 POUNDS), AND NOTED THAT THE UK EARNS EXTENSIVE REVENUES FROM THE EXPORT OF TV PROGRAMS. HE SAID THAT THE UK SALE OF TV PROGRAMS OVERSEAS MAY BE MORE PROFITABLE TO THE UK THAN RESTRICTING IMPORTS OF TVS.

7. AT THIS POINT, U.S. MADE BRIEF STATEMENT AS PER INSTRUCTIONS REFTTEL, POINTING OUT THAT MANY OF THE POINTS WE HAD WISHED TO MAKE HAD ALREADY BEEN MADE BY OTHER DELEGATIONS.

8. EGYPT, INDIA, BRAZIL, SRI LANKA, YUGOSLAVIA, HUNGARY, LIMITED OFFICIAL USE

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AND AUSTRALIA ALL SUPPORTED POINT OF VIEW THAT ACTION UNDER ARTICLE XIX SHOULD BE NON-DISCRIMINATORY. INDIA SAID THAT THERE WAS NO DOUBT THAT ARTICLE XIX SHOULD BE ON A MFN BASIS AND THAT THE ONLY LATITUDE IS PROVIDED IN PART 4 IN FAVOR OF LDCS.

9. CANADA (MARTIN) SAID THAT ACTION BY EC RAISED QUESTIONS WITH RESPECT TO ITS CONFORMITY TO THE GENERAL AGREEMENT. ACCORDING TO MARTIN, ARTICLE XIX DOES NOT PROVIDE FOR DISCRIMINATORY APPLICATION, AND CANADA ASKED FOR JUSTIFICATION AS TO HOW SUCH ACTION COULD BE RECONCILED WITH THE GENERAL AGREEMENT.

10. FINLAND, SPEAKING ON BEHALF OF NORDICS, SAID THAT THEY DO NOT THINK THAT THE ACTIONS AND MODALITIES IN THIS CASE COULD BE FOUND TO CONTRADICT ARTICLE XIX. THEY THEN READ LATTER PART OF HAVANA QUOTATION REFERRED TO BY HONG KONG DELEGATE NOTING THAT SUCH ACTION "SHOULD AVOID INJURY TO THE FULLEST EXTENT POSSIBLE TO OTHER SUPPLYING MEMBER STATES" (GATT ANALYTICAL INDEX, P. 108).

11. EC (LUYTEN) EXPRESSED SURPRISE AT THE EXTENT OF THE DEBATE ON A MATTER OF WHICH THE EC HAD ONLY LEARNED YESTERDAY WOULD BE RAISED UNDER "OTHER BUSINESS." NO ONE HAD CONSULTED WITH THE EC CONCERNING THE ACTION, AND LUYTEN QUESTIONED WHY THE PRINCIPLE WAS BEING RAISED NOW WHEN THE SAME QUESTION COULD HAVE BEEN RAISED LAST YEAR UNDER NOTIFICATIONS MADE ON FOOTWEAR AND COLOR TV ITEMS. HE SAID QUESTION IS NOT AS CLEAR AS SOME PRETEND. HE NOTED THAT THE INTERPRETATION OF ARTICLE XIX IS BEING DISCUSSED IN THE MTN AND AN UNDERSTANDING COULD BE DEVELOPED ON THIS QUESTION. HE RESERVED ON THE QUESTION CONCERNING INTENTIONS OR LEGALITY OF THE ACTION.

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HE CALLED IT A COMPLEX PROBLEM AND HOPED WE COULD FIND A SOLUTION, BOTH IN THEORY AND IN PRACTICE.

12. PAKISTAN DEL INTERVENED FOR SECOND TIME TO STATE THAT VOLUNTARY RESTRAINTS OFTEN WERE ONLY A POLITE NAME FOR RESTRAINTS IMPOSED ON CERTAIN COUNTRIES. HE SAID THAT THERE WAS NO COVER UNDER THE GATT FOR DISCRIMINATORY RESTRAINTS, EVEN WHEN THEY INCLUDE A VOLUNTARY RESTRAINT UNDERTAKING. THERE SHOULD BE NO DOUBT ON THIS MATTER. IF THERE WAS, HE SUGGESTED THAT THE DIRECTOR GENERAL SHOULD ADVISE THE GROUP ON THE INTERPRETATION OF ARTICLE XIX IN THE PAST AND THE PRECEDENTS THAT HAVE BEEN SET.

13. DG LONG INDICATED THAT THE SECRETARIAT WAS READY TO MAKE A STUDY ON THE INTERPRETATION OF ARTICLE XIX IF SO REQUESTED. COUNCIL CHAIRMAN YUNUS SAID THAT WE SHOULD REVERT TO THE MATTER AT A LATER MEETING, BUT THE HONG KONG DELEGATE ARGUED THAT A SURVEY BY DIRECTOR GENERAL SHOULD BE UNDERTAKEN. EC THEN SAID IT WOULD NOT OPPOSE SUCH A STUDY BUT WANTED IT CLEAR THAT IT SHOULD BE A STUDY OF THE HISTORIC EVOLUTION OF THE DISCUSSION IN DIFFERENT ECONOMIC CIRCUMSTANCES AND THAT WE SHOULD LOOK AT THE DIFFERENT PHASES OF NON-DISCRIMINATION AND SELECTIVE TREATMENT SINCE 1947. PAKISTAN ARGUED THAT HE DID NOT HAVE IN MIND A DOCTORAL THESIS BUT A SPECIFIC STUDY RELATED TO ARTICLE XIX AND THE NATURE OF ITS INTERPRETATION AS HAS BEEN ACCEPTED BY THE CPS.

14. COUNCIL CHAIRMAN CLOSED DISCUSSION BY ENCOURAGING FURTHER BILATERAL CONSULTATIONS BETWEEN THE TWO PARTIES WITH THE UNDERSTANDING THAT COUNCIL SHOULD LOOK AT THE MATTER AGAIN. HE ALSO SAID THAT ANY STUDY UNDERTAKEN BY THE SECRETARIAT SHOULD ONLY LOOK AT THE FACTS. INTERPRETATION OF THOSE FACTS IS THE RESPONSIBILITY OF THE CONTRACTING PARTIES, AND THE SECRETARIAT COULD NOT ASSUME

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THAT RESPONSIBILITY.

15. COMMENT: ALTHOUGH WE KNEW THAT KOREAN DEL HAD LOBBIED SEVERAL DELEGATIONS FOR SUPPORT, WE WERE SUR-

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PRISED AT THE NUMBER AND STRENGTH OF INTERVENTIONS
ATTACKING UK/EC ACTION. EC MAY SUSPECT THAT THIS CARE-
FULLY ORCHESTRATED SCENARIO WAS DEVELOPED BY THE U.S.
END COMMENT. VANDEN HEUVEL

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